(S)

(Ex)

HIGH COURT OF CHHATTISGARH AT BILASPUR
Cr. A. No. 280/2002

APPELLANTS Jora Lal and another

Versus

Respondent State of Chhattisgarh

Judgment for consideration

Sd/-

JUDGE
05-7-2007

Hon'ble Shri Justice L.C. Bhadoo

Sd/-
L.C. Bhadoo
Judge

Judge post for 06-7-2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR
Cr. A. No. 280/2002

APPELLANTS

1. Jora Lal, s/o Peru Satnami, aged 57 years, occupation cultivation
2. Babu Lal, s/o Peru Satnami, aged 35 years, occupation cultivation

Both resident of village Khajri, Tahsil Kheragarh, District Rajnandgaon.

Versus

RESPONDENT The State of Chhattisgarh, through the District Magistrate, Rajnandgaon

D.B. : Hon'ble Shri L.C. Bhadoo and
Hon'ble Shri Dhirendra Mishra, JJ.

Shri Shashank Thakur, counsel for the appellants.
Shri Akhil Mishra, Additional Public Prosecutor, for the State/ respondent.

JUDGMENT

Per Dhirendra Mishra, J. :

The instant appeal is directed against the judgment of conviction and order of sentence dated 12-2-2002 passed by the Addl. Sessions Judge, Khairagarh, Rajnandgaon in S.T. No. 19/2001, whereby appellant Jeeralal and deceased accused Babulal have been convicted under section 302 of I.P.C. and Sections 302 read with Section 34 of I.P.C. respectively and each of the accused persons has been sentenced to undergo imprisonment for life and fine of Rs. 2000, in default of payment of fine, to further undergo R.I. for 10 months.

2. Case of the prosecution as unfolded from the First Information Report is that Amrita Bai lodged a report in Police Station Khairagarh on 6-6-2000 mentioning therein that in the morning at about 7.30 a.m., she along with her father Rugu and younger brother Tukaram had gone to the field situated near their home for closing the water outlet of the field. His father Rugu was sitting on the boundary whereas she along with her

brother was near the water outlet. Tukaram was digging the soil near the stump of jujube tree. At that time, Jeeralal armed with axe and Babulal armed with Lathi came from neighboring field and abused her father angrily alleging that 'after cutting the stumps you intend to encroach his field' and started assaulting her father by axe and lathi, whereupon she shouted "help", however they fell her father by assaulting and continued to assault. The incident was seen by the villagers however they did not intervene. Her father had received injuries over head, left cheek, below the ear, left hand, left leg and right leg and blood started oozing. He died on the way while he was taken to the hospital by bullock cart.

3. After registering the offence, investigation was commenced. After giving notice Ex. P-2 to the panchas, inquest Ex. P-3 over the dead body was prepared. After preparing inquest over the dead body in presence of witnesses, dead body was sent for autopsy to Primary Health Centre, Khairagarh where Dr. R.R. Jindani conducted post mortem and submitted his report of Ex. P-11. On the memorandum of Ex. P-6 of appellant Jeeralal, weapon of offence axe was seized vide Ex. P-7. Investigating Officer prepared site plan of Ex. P-5. Seized articles-weapon of offence, lathi, axe and blood stained wearing apparels of the deceased were sent for chemical examination and the report of F.S.L. is Ex. P-14. After usual investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Khairagarh who in turn committed the case to the Court of Sessions Judge, Rajnandgaon and the same was received on transfer by the learned Addl. Sessions Judge for trial.

4. Charge under Section 302 of I.P.C. was framed against appellant Jeeralal and deceased Babulal who abjured their guilt. The prosecution examined in all 7 witnesses. Thereafter statement of accused persons was recorded under Section 313

of Cr.P.C. The appellants denied the circumstances appearing against them and pleaded innocence and false implication. However, the learned Addl. Sessions Judge convicted and sentenced the appellants as mentioned above.

5. Homicidal death of the deceased Rugu is not in dispute. Even other wise from the statement of Amrita Bai (P.W. 1) and Tukaram (P.W. 2) as also the post mortem report which has been produced by Dr. Jindani (P.W. 6), in which he has found the injuries described below:

1. Bruise in size of 3 x 1/2" above left thigh;
2. Bruise in size of 6 x ½" on left thigh below injury no. 1;
3. Bruise 4 x 1/2" above the left thigh at a distance of 2";
4. Bruise 3½ x ½ over left thigh below the injury no. 3;
5. Bruise in size of 2 x ½" over left arm, 4" below the elbow;
6. Abrasion in size of ¾" below the left knee
7. Incised wound in size of 1 x ½" skin deep on the left thigh;
8. One incised wound in size of ½ x ½" over right thigh 1/2" above the ankle;
9. One incised wound in size of 2 ½ x ¼" on left side of head, corresponding to this injury there was a fracture of bone in size of 1 1/2 " in length and the brain was visible;
10. One incised wound in size of ½ x ¼" on left side on head ½" above the injury no. 9, in this injury , there was a fracture of 1";
11. One incised wound in size of 1 x ¼" on occipital region of head.

Injury no. 1 to 6 were caused by hard and blunt object whereas injuries no. 7 to 11 were caused by some sharp edged article.

and has opined that the cause of death is the injuries present over head and other parts of the body, homicidal death of Rugu is established.

6. Learned counsel for the appellant submitted that from the evidence available on record, it is evident that the complainant party was aggressor as they were digging the boundary of the field of the accused persons with a view to take possession and the accused persons have exercised the right of private defence of their property. D.W. 1 Peelaram Chandel, Revenue Inspector has proved the demarcation report in which the encroachment by constructing house over 0.12 acre land by Meghnath, son of the deceased has been mentioned. There is a definite embellishment in the statement of Tukaram as in the Court statement he has alleged that the deceased was assaulted by means of stones whereas there is no allegation in his diary statement about the same. There are material omissions and contradictions in the statement of the alleged eye-witness Amrita Bai, as pointed out in para 35 of the judgment.

7. D.W. 1 Peelaram Chandel, Revenue Inspector has proved the demarcation report in which the encroachment by constructing house over 0.12 acre land by Meghnath, son of the deceased has been mentioned. As per report of the F.S.L., no blood stains were found over the weapon of offence and independent witnesses have not supported the prosecution case.

8. On the other hand, learned counsel for the State supported the impugned judgment.

9. We have heard learned counsel for the parties.

10. Conviction is based on the statement of complainant Amrita Bai (P.W. 1) and Tukaram (P.W. 2) who are the eye-

witnesses of the incident. Amrita Bai has stated that on the date of incident at about 7.30 a.m. her father Rugu was sitting on the boundary of the field where she was closing the water outlet whereas her brother Tukaram was digging the soil to remove the stump, at that time Babulal armed with lathi and Jeeralal armed with axe came there. They started assaulting her father saying that he is supervising the digging of soil. Jeeralal assaulted her father with axe over his head, arm, both legs and near neck and Babulal also assaulted with lathi. Her father fell on the earth whereupon she shouted. She snatched the axe of Jeeralal, in the meanwhile, villagers had come there and accused persons went away. Villagers were taking her father in bullock cart and she was accompanying them. However her father died on way. She had produced the axe in the police station and lodged the report. In cross-examination, she has denied that their house was constructed over the land of the accused persons and any Panchayat was convened for this purpose. She has admitted that there was some land related dispute of her father and brother Meghnath with Bahur Singh and Sukhram and her father had lodged report against Bahur and Bhikham Singh etc. She has denied that the stump was situated in the filed of accused persons and the dispute was in relation to forceful possession by her father on the field belonging to the accused persons. She has also denied the suggestion that she reached only after hearing noise and she was not present at the time of incident. In the cross-examination of this witness, the defence has not been able to elicit any material contradiction or omission in her statement except some trivial contradictions which do not go to the root of the matter. Statement of this witness is corroborated in material particulars from the statement of her brother Tukaram who has also stated that he along with his father and sister Amrita Bai were present in the place of incident, his father was sitting

whereas her sister was closing the water flow and he himself was digging the soil and at that time the accused persons came armed with axe and lathi and started assaulting Rugu as a result of which he sustained injuries over his body and he died while he was being taken on a bullock cart. In the cross-examination of this witness also, the defence has not been able to impeach the credibility of this witness though he has made certain embellishment regarding assault by stone weighing 10-10 kgs. However, simply because there are some omissions and contradictions here and there or some embellishment in the statement of these eye-witnesses, their testimony cannot be discarded. Except the minor omissions and contractions as pointed out, these two witnesses are stuck to their claim regarding the main incident i.e. assault by axe and lathi by the accused persons. The statement of these two witnesses are further corroborated by the promptly lodged F.I.R. in which name of the accused persons, the weapon by which assault was made and the presence of these two witnesses on the spot has been mentioned. Their statements are further corroborated by the statement of Dr. D.R. Jindani (P.W. 6) and post mortem report in which the injuries corresponding to the injuries narrated by these two witnesses have been found.

11. So far as defence of the appellant that the complainant party was aggressor as they were trying to encroach the land in question, there is no evidence available on record that the land in question belonged to the accused persons. D.W. 1 Peelaram Chandel has not stated that on demarcation, encroachment of deceased was found over the land of the accused. Even other wise from the evidence available on record, it is clear that the deceased was only sitting on the boundary and at that time, the accused persons came there armed with weapon axe and lathi and started assaulting without any provocation, therefore, the argument that the accused persons acted in the right of private

defence of their property cannot be accepted. So far as the fact that in the report of F.S.L., blood stains have not been found over the weapon of offence is concerned, in view of the fact that involvement of the accused persons in the crime in question is established by the statements of eye-witnesses, Negative F.S.L. report does not in any manner creates any doubt about the prosecution case.

12. On the basis of the aforesaid analysis, we are of the considered opinion that the prosecution has proved the involvement of the appellant in crime in question beyond reasonable doubt and the trial Court has not committed any illegality or infirmity in convicting and sentencing the appellant by the impugned judgment.

13. The appeal being devoid of substance deserves to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge